Samuel Pargiter Fuller, Son and Heir of *Samuel Pargiter* alias *Fuller*, an Infant by *Thomas Pargiter* Gent. his Guardian, and *Edmund Pargiter* Adminiſtrator of the ſaid *Samuel Pargiter* alias *Fuller*, during the Minority of the ſaid *Samuel Pargiter* alias *Fuller*, Appellants.

Sir *Richard Mill* Bart. Adminiſtrator of *Thomas Grey* Eſq; deceaſed, and alſo Adminiſtrator *de bonis non* of Sir *John Mill* Bart. deceaſed, *Philadelphia Mill*, *Robert Knollys* Eſq; and *Margaret* his Wife, late *Magaret Mill*; Sir *Thomas Hoby* Bart. Adminiſtrator of Sir *Thomas Hoby* Bart. deceaſed, and Adminiſtrator *de bonis non* of Dame *Elizabeth Hoby* deceaſed, and alſo Adminiſtrator *de bonis non*, with the Will annexed of *Mary Mill* deceaſed, Reſpondents.

The Reſpondents CASE.

THOMAS GREY Eſq; deceaſed, had Iſſue two Daughters, *viz.* *Margaret*, who was married to Sir *John Mill* Bart. deceaſed, late Father of the Reſpondent Sir *Richard Mill*, and of other the Reſpondents, or of thoſe whom they repreſent, and *Jane*, who married to *Dowſe Fuller* Eſq;

4th and 5th of *Auguſt* 1684.

THAT ſaid *Thomas Grey*, by Indentures of Leaſe and Releaſe, bearing Date reſpectively the Fourth and Fifth Days of *Auguſt* 1684; (made Previous to the Marriage of the ſaid *Jane Grey*, with the ſaid *Dowſe Fuller*;) the Releaſe being Tripartite, and made between Himſelf and the ſaid *Jane Grey* of the firſt Part; *Thomas Betteſworth* Eſq; and *Lawrence Alcock* of the ſecond Part; and Dame *Elizabeth Fuller* Widow and Relict of Sir *Dowſe Fuller* Knt. deceaſed; and *Dowſe Fuller* Eſq; Son and Heir of the ſaid Sir *Dowſe Fuller*, by the ſaid Dame *Elizabeth Fuller* of the third Part: The ſaid *Thomas Grey*, did Grant and Convey to the ſaid *Thomas Betteſworth*, and *Lawrence Alcock*, and their Heirs, the Mannor of *Stedham* and ſeveral other Lands, Tenements, and Hereditaments, in the County of *Suſſex*, in the ſame Indenture particularly mentioned and deſcribed; to the uſe of Himſelf and his Heirs, untill the ſaid Marriage had, and after the Solemnization of the ſaid intended Marriage, (which was ſoon after had,) to the uſe of the ſaid *Thomas Grey*, for Fourſcore and Nineteen Years if he ſhould ſo long Live, and after the Determination of that Eſtate; to the ſaid Truſtees and their Heirs during the Life of the ſaid *Thomas Grey*, to ſupport the Contingent Uſes and Eſtates; and from and after the Deceaſe of the ſaid *Thomas Grey*; to the uſe of the ſame Truſtees, and their Executors, Adminiſtrators and Aſſigns, for the Term of One Hundred Years without Impeachment of Waſte, and after the Determination of that Term; to the ſeveral Uſes in the ſame Indenture of releaſe Declared: And as for and concerning the ſaid Term of One Hundred Years, is by the ſaid Indenture of Releaſe, declared to be limited to the ſaid *Thomas Betteſworth*, and *Lawrence Alcock*, their Executors, Adminiſtrators and Aſſigns; upon truſt that after the Deceaſe of the ſaid *Thomas Grey*, by Sale or Mortgage of the ſaid Term, or of a competent Part thereof, and by and with the Rents and Profits thereof, in the mean Time after the Death of the ſaid *Thomas Grey*, untill Sale, the ſaid Truſtees ſhould raiſe One Thouſand Nine Hundred and Ninety Pounds, towards Payment of the Debts in the Schedule thereto annex'd, mentioned with a Proviſo; that if the ſaid *Thomas Grey*, or any other Perſon or Perſons in his Life-time, and at his requeſt ſhould pay and diſcharge

discharge any Part of the said Debts in the said Schedule mentioned, or in Case any of the Creditors to whom such Debts were owing, should Release to the said *Thomas Grey*, all or any of the said Debts; then the said Term should stand charged with the Payment of the principal Money of such Debts so paid in the Life-time of the said *Thomas Grey*, or given or released to him for the Benefit of the Person, who should so pay the same, or to whom the same should be released or given, and to the Payment of the Interest of such principal Money, which should grow due after the Death of the said *Thomas Grey*; it being the Intent of all the Parties to the said Indenture of Release, that the Interest which should grow due for such Debts, during the Life of the said *Thomas Grey*, should be satisfied, paid and discharged by the said *Thomas Grey*; and that the said Term of One Hundred Years should be charged and liable to the Payment of the said principal Summ of One Thousand Nine Hundred and Ninety Pounds, mentioned in the said Schedule in such Manner, that in Case any of the Principal Money in the said Schedule contained, should be paid by, or given and Released unto the said *Thomas Grey*, that notwithstanding the Principal Summs should not Extinguish, but the said Term should be charged with the Payment of which so much Principal Money as should be so Paid by or given or Released unto the said *Thomas Grey*, to, and for the Benefit of him the said *Thomas Grey*, his Executors and Assigns.

1703. THE said *Thomas Grey* died Intestate, whereby his Personal Estate became Distributable according to the Statute for Distribution of Intestates Estates; and one Moiety thereof belonged to Sir *John Mill* Bart. *Richard Mill*, now Sir *Richard Mill*, *Philadelphia Mill*, *Margaret Mill*, and *Mary Mill*, Children of *Margaret* eldest Daughter of the said *Thomas Grey*, by the said Sir *John Mill* the Father.

Bill filed Hilary Term 1714. THE said Sir *Richard Mill*, *Margaret Mill*, Sir *Thomas Hoby* Bart. and Dame *Elizabeth* his Wife, Executors of *Mary Mill* deceas'd, and *Philadelphia Mill*, which said *Margaret*, *Elizabeth*, *Mary* and *Philadelphia*, were four Sisters of the said Sir *Richard Mill*, exhibited their Bill in the Court of *Chancery* against *Samuel Pargiter* alias *Fuller*, who married the Daughter and Heir of the said *Dowse Fuller* and *Lawrence Alcock*, the surviving Trustee in the said Settlement, thereby seeking against the Defendant *Pargiter Fuller* to have an Account of the Personal Estate, and the Rents and Profits of the real unsettled Estates of the said *Thomas Grey*; and to have the Deeds and Writings of his Estate delivered to him; and that the Defendant *Alcock* might join with the said Defendant *Pargiter* alias *Fuller*, in raising the said One Thousand Nine Hundred and Ninety Pounds, and Interest due thereon, since the Death of the said *Thomas Grey*.

20 June 1716, 11 June 1719. THE Defendant *Pargiter* alias *Fuller* put in his Answer to the original Bill and amended Bill, and thereby (amongst other Things) insisted, that no part of the Personal Estate of the said *Thomas Grey* came to his Hands; and that he did not know or believe that the said *Thomas Grey* did in his Life-time, and with his own Money, pay all or most of the Debts in the said Schedule to the said Indenture of Release mentioned, but believed that the said *Jane Fuller*, the said *Thomas Grey*'s Daughter, paid all or the greatest part of the said Schedule Debts; and believed if an Account were fairly stated, the Plaintiffs would appear greatly indebted to the Defendant, as Administrator of the said *Jane Fuller*, on Account of what she paid for the Debts of the said *Thomas Grey*; and denied that he had Assetts of the said *Thomas Grey*'s Personal Estate to pay his Debts, and insisted that he had a Demand of Eight Hundred Pounds, and Interest, on the said *Thomas Grey*'s Estate.

2d June 1719. THE Defendant *Alcock* admitted by his Answer the said Indentures of Lease and Release, and that he was Executor of *Lawrence Alcock*, the surviving Trustee, and submitted to do as the Court should direct.

THE Plaintiffs replied to the Answer of the said Defendant *Pargiter* alias *Fuller*, and several Witnesses were examined in the said Cause.

Decree 15th Nov. 1720. By Default. THE Cause came on to be heard before the Right Honourable the Master of the *Rolls*, when the said Defendant *Pargiter* alias *Fuller* made Default; and his Honour Decreed that upon the Plaintiffs bringing the Administrator of the said *Thomas Grey*, and the Administrator *de bonis non* of Sir *John Mill* his Brother, before Mr. *Borret*, one of the Masters of the said Court of *Chancery*, the said

ſaid Defendant *Pargiter* alias *Fuller* ſhould account before the ſaid Maſter for the Perſonal Eſtate of the ſaid *Thomas Grey*, come to the Hands of the ſaid *Jane Fuller*, or of *Margaret* his late Wife; and of what came to his own Hands, or to the Hands of any other Perſon, for their or either of their Uſe, for taking of which Account the uſual Directions were given. And it was further Ordered and Decreed, that the Sum of Nineteen Hundred and Ninety Pounds, with Intereſt for the ſame, at the Rate of five Pounds *per Cent. per Ann.* from the Death of the ſaid *Thomas Grey*, be raiſed by Sale or Mortgage of the ſaid Term of an Hundred Years, as the ſaid Maſter ſhould find moſt convenient; And that all Parties ſhould join in the Sale or Mortgage for that Purpoſe, and that the ſaid Sum of Nineteen Hundred and Ninety Pounds, and Intereſt thereof, ſhall be taken as part of the Perſonal Eſtate of the ſaid *Thomas Grey*; and that one Moiety thereof, after Debts and Funerals paid, ſhould be paid to the Plaintiffs. And it was further Ordered and Decreed, That the Defendant *Pargiter* alias *Fuller*, come to an Account before the ſaid Maſter, for what he or the ſaid *Margaret* his late Wife, or the ſaid *Jane Fuller* had received, by and out of the Rents and Profits of the Plaintiff Sir *Richard Mill*'s Real Eſtate, for the taking of which Account the uſual Directions were given; and what upon the ſaid Account ſhould appear to be in the Defendant's Hands, was Ordered and Decreed to be paid to the Plaintiff Sir *Richard Mill*; and Conſideration of Coſts between the Defendant *Pargiter Fuller* was reſerved till after the ſaid Maſter's Report; and the Decree was to be binding to the Defendant *Pargiter Fuller*, unleſs he being ſerved with Subpœna ſhould ſhew good Cauſe to the contrary.

23d *March* 1721. THE Defendant was ſerved with a Subpœna to ſhew Cauſe againſt the ſaid Decree the 11th Day of *April* following.

26th *April* 1722. Order on Hearing made Abſolute. THE ſaid Defendant *Fuller* being duly ſerved with Subpœna to ſhew Cauſe, and making Default, the Order on Hearing was made Abſolute; and according to the Decree, the Reſpondents brought the Adminiſtrator of *Thomas Grey*, and the Adminiſtrator *de bonis non* of Sir *John Mill*, before the ſaid Maſter, and the Decree was Signed and Inrolled, and the Plaintiffs were proceeding to carry on the Decree with Execution.

19th *Nov.* 1722. THE Defendant *Samuel Pargiter* alias *Fuller* died, whereby the Suit abated, and the Plaintiffs proceeded to Revive the Cauſe againſt the Appellants, who were ſerved with *Subpœna Scire facias* to Revive the ſaid Decree, and they refuſed to appear thereto; but the Appellants further to delay the Reſpondents in carrying on the ſaid Account, obtained the Lord *Chancellor*'s Order to refer to a Maſter the Regularity of Inrolling the ſaid Decree.

14th *Dec.* 1729. Maſter's Report. THE Maſter, by his Report, ſtates the ſeveral Proceedings of the Inrolment of the Decree Specially, and ſubmits the Regularity thereof to the Court.

27th *Nov.* 1730. Lord Chancellor's Order. ON Hearing the Matter of the Maſter's Report, the Lord *Chancellor* declared, he ſaw no Cauſe to ſet aſide the Inrollment of the ſaid Decree, and did therefore Order that the ſame ſhould ſtand.

THE Appellants have Appealed to the Houſe of Lords, and by their Petition of Appeal ſay, that they are aggrieved by the ſaid Decree; and therefore do Appeal and Pray a ſhort Day for Hearing the ſaid Cauſe, and that the ſaid Decree may be reverſed, or ſuch Order made as ſhall ſeem juſt.

BUT the Reſpondents humbly hope, that the ſaid Decree and Proceedings are regular and agreeable to the Rules of Equity, for the following amongſt other Reaſons.

Firſt. FOR that there was no Irregularity in the Signing or Inrolling of this Decree, and therefore the ſame ought not now to be opened, and the Reſpondents to loſe the Benefit of all this Courſe of Proceedings for ten Years paſt, on a bare Suggeſtion only, which it may be in any Body's Power to make, and thereby to occaſion great Vexation.

Second. FOR that from the Time of fileing the Plaintiffs Bill to the Time of the firſt Hearing was four Years; and from the Time of the Defendant *Pargiter* Sen. putting in his ſecond Anſwer to the Time of the ſaid firſt Hearing, wherein the ſaid Defendant *Pargiter* made Default, was above twelve Months; and from the Time of his being ſerved with Proceſs to ſhew Cauſe againſt the ſaid Decree before it was made abſolute, was above a Month; and from that time to his Death was near ſeven Months; So that there was no Surprize or want of

of Time in the Appellant's Father, or any Proof in the Cauſe of any Inability in him to make his Defence.

Third. FOR the Appellant's Father having made Default at the original Hearing, and alſo at the Day given to him to ſhew Cauſe againſt the ſaid Decree, the Appellants, who ſtand in his Place, ought not now be admitted to inſiſt upon or lay any Matters before your Lordſhips, which were not inſiſted upon or laid before the Court of *Chancery* at the time of making the Decree, ſince that would tend to ſubvert all the Proceedings of the ſaid Court, and give Opportunities for great Surprize and Delay in Cauſes.

THEREFORE the Reſpondents humbly hope that the ſaid Decree ſhall be Affirmed, and the ſaid Appeal Diſmiſſed with Coſts.

P. YORKE.
THO. LUTWYCHE.

Samuel Paxton Fuller, and others, APPELLANTS.

Sir *Richard Mill* Baronet, and others, RESPONDENTS.

The Reſpondents CASE.

To be heard at the Bar of the Houſe of Lords, *Tueſday* the 6th of *April* 1731.

The Counsel for the Respondts Objecting that Default was made on the part of the Appellt at the Hearing in Chancery and therefore no Evidence could be produced here and the Counsel on both sides being heard to that Matter Ordrd that the Appeal be Dismissd & Decree Affirmd.